IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Crl.MC.No. 3776 of 2007()

LP.2/2003 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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PETITIONER: 1ST ACCUSED

MOHANDAS @ RAVI, S/O GOPALAN,
BHARATHI BHAVANAM HOUSE,
MYLADUMPARA, KUMBAZHA MURI,
PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: STATE/DEFACTO COMPLAINANT AND CW2

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. RAJENDRAN,
KOCHUNEDUMPALLIL HOUSE, MYLADUPARA,
PATHANAMTHITTA VILLAGE, KOZHENCHERY TALUK,
PATHANAMTHITTA DISTRICT.

3. SEENA RAJENDRAN, D/O RAJENDRAN,
KOCHUNEDUMPALLIL HOUSE, MYLADUPARA,
PATHANAMTHITTA VILLAGE, KOZHENCHERY TALUK,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.VARGHESE PREM
PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3776 OF 2007

Dated this the 18th day of December, 2007

O R D E R

This application under Section 482 Cr.P.C. is filed by the petitioner who is the 1st accused in a prosecution for offences punishable, inter alia, under Section 326 IPC. He has come to this Court along with the respondents who, it is submitted, have compounded all the offences allegedly committed by the petitioner. It is prayed the powers under Section 482 Cr.P.C. may be invoked and the proceedings against the petitioner, which is now pending as L.P.2/03 before the Chief Judicial Magistrate, Pathanamthitta, may be quashed.

2. What is the ground? I have heard the learned counsel for the petitioner. That the parties have settled their disputes and that the de facto complainant/the injured have compounded the offences allegedly committed by the petitioner is the only ground. No other grounds are urged at

all. The offences include the offence punishable under Section 326 IPC which is not a compoundable offence under Section 320 Cr.P.C.

3. Powers under Section 482 Cr.P.C. have been described as awesome. The extraordinary inherent powers can, in an appropriate case, be certainly invoked to do justice beyond the law. The interests of justice may, at times, transcend the interests of mere law and in such circumstances, the stipulations of Section 320 Cr.P.C. cannot be reckoned as a fetter on the sweep, width and amplitude of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. There can be no dispute on these prepositions. The decision in ***B.S.Joshi Vs. State of Haryana*** [AIR 2003 SC 1386] makes the position very clear.

4. But the question is whether this is a fit case where such extraordinary inherent powers deserve to be invoked or not. I have heard the learned counsel for the petitioner and the counsel for the respondents/victims in detail. Except that they

have been compounded the non-compoundable offence, I find absolutely no reason which can persuade me to invoke the powers under Section 482 Cr.P.C. Of course, there is a contention that the petitioners cannot be mulcted with acceptable liability by invoking the powers under Section 34 Cr.P.C. But, I find the said contention to be absolutely baseless and unacceptable.

5. The decision in ***B.S.Joshi Vs. State of Haryana*** [AIR 2003 SC 1386] cannot be reckoned as obliterating the distinction between the compoundable and non-compoundable offences under Section 320 Cr.P.C. The mere fact that the non-compoundable offence has been compounded by the parties in violation of the stipulations of law cannot ordinarily be reckoned as a sufficient reason to invoke the powers under Section 482 Cr.P.C. It is not a question of want of jurisdictional competence under Section 482 Cr.P.C. The question is whether, in the facts and circumstances of the case, such powers can or need be

invoked.

6. I am satisfied that no such circumstances are there in this case which can justify the invocation of the powers under Section 482 Cr.P.C. notwithstanding the specific stipulation of law that the offence under Section 326 IPC is not compoundable.

7. It follows, therefore, that the petitioner's prayer to quash the proceedings cannot be granted. However, I take note of the submission of the learned counsel for the petitioner that the petitioner is employed abroad and that he has to return to his place of employment immediately. I take note of the submission that the pendency of the case may affect his right to get his passport/visa renewed.

8. I can only say that it is for the petitioner to immediately surrender before the learned Magistrate and seek regular bail. If the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the

learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself. Thereafter, the petitioner can report to the learned Magistrate that the compoundable offences have been compounded. The petitioner can also advance his argument before the learned Magistrate that charges are not liable to be framed for any non-compoundable offence. The learned Magistrate must consider that contention and pass appropriate orders under Section 239/240 Cr.P.C.

9. I find merit in the request made by the learned counsel for the petitioner that an attempt must be made for expeditious disposal of the case against the petitioner. After appearing before the learned Magistrate, the petitioner can make such request and the learned Magistrate must consider the facts and circumstances of this case and ensure expeditious disposal of the case against the petitioner.

10. The learned counsel for the petitioner finally submits that if for any reason the trial is not completed and the

proceedings are not brought to termination before the time fixed for petitioner's return, the petitioner may be permitted to file a petition to exempt him from personal appearance and permit him to be represented by his counsel. I have no doubt that such a request must be considered by the learned Magistrate on merits, in accordance with law and with compassion.

11. This Crl.M.C. is, in these circumstances, dismissed with the above observations.

12. Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

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